

IN THE HIGH COURT OF BOMBAY AT GOA.**FIRST APPEAL NO. 104 OF 2001.**

The New India Assurance Co. Ltd.,
 Velho Building, 3rd Floor,
 Municipal Garden Square,
 Panaji – Goa.

.....Appellant

versus

1. Mr. Veerapa Naidu, s/o G. Basavaiah,
 Village Vasili, Atmakur Mandal,
 Nellore District, Andhra Pradesh,
 C/o Adv. Smt. Ranjana Salgaocar,
 D-2 Phoenix Plaza, Feira – Alta,
 Mapusa – Goa.
2. Mrs. Ganga Padmamma, w/o Veerapa Naidu,
 Village Vasili, Atmakur Mandal,
 Nellore District, Andhra Pradesh,
 C/o Adv. Smt. Ranjana Salgaocar,
 D-2 Phoenix Plaza, Feira – Alta,
 Mapusa – Goa.
3. Shri Somshekhar, s/o Basappa,
 Driver, C/o South East Construction Co.,
 Cansca – Tivim, Bardez – Goa.
4. South East Construction Co.,
 Having its Head Office at Flat 1-A,
 Aarti Apartment, 105-Habibulla Road,
 T. Nagar, Chennai – 600017,
 Represented by its Managing Partner
 M. Padmaiah, having his work office at
 C/o Atmaram Kanolkar (Tatoji), Canca,
 Tivim, Bardez – Goa.

.....Respondents

Shri Emerica Afonso, Advocate for the Appellant.

Shri S. G. Bhobe, Advocate for the Respondents.

CORAM : B. H. MARLAPALLE &
N. A. BRITTO, JJ.

DATE : 11TH OCTOBER, 2004.

ORAL JUDGMENT (PER MARLAPALLE, J.) :

1. This appeal arises from the award passed by the Learned Presiding Officer, Motor Accident Claims Tribunal (North) at Mapusa in Claim Petition No. 48/1997 filed under section 166 of the Motor Vehicle Act, 1988.

2. The Supreme Court in the case of National Insurance Company Limited v/s Nicolletta Rohtagi & ors., (2002) 7 SCC 456 has held that under section 173 of the Motor Vehicles Act, 1988, an insurer has the right to file an appeal before the High Court on limited grounds available under section 149(2) and the appeal being product of the statute it is not open to the insurer to take any plea other than those provided under section 149(2) of the said Act. In view of this ratio, this appeal filed by the Insurance Company cannot be entertained.

3. However, in the case of *Sadhana Lodh v/s National Insurance Co. Ltd. & anr.*, reported in (2003) 3 SCC 524, the Supreme Court further held that the right of appeal is a statutory right and where the law provides remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Articles 226 & 227 of the Constitution on the premise that the insurer has limited grounds available for challenging the award given by the Tribunal and this being the legal position, the petition filed under Article 227 of the Constitution by the insurer would be misconceived. Where a statutory right to file an appeal has been provided for, it is not open to the High Court to entertain any such petition under Article 227 of the Constitution. In such a case, the remedy available to the Insurance Company is to file Petition under section 115 of the Civil Procedure Code. Where the remedy for filing such a revision has been expressly barred by a State enactment, only in such cases petition under Article 227 of the Constitution would lie.

4. Mr. Afonso, Learned Counsel for the Insurance Company has therefore filed Miscellaneous Civil Application NO. 775 of 2004 seeking leave to convert this First Appeal in a Writ Petition under Article 227 of the Constitution. However under the scheme of the Civil Procedure Code as applicable in Goa, there is no express bar

for filing a revision against the award passed by the Motor Accident Claim under section 166 of the Motor Vehicles Act which is a special statute and therefore the applicant cannot be allowed to file Writ Petition under Article 226 & 227 of the Constitution in view of the decision in Sadhana Lodh's case (supra).

5. Having considered the grounds of challenge in this appeal which grounds do not find place in the scheme of section 149(2) of the Motor Vehicles Act, we are of the considered view that the impugned award is required to be tested by allowing the Insurance Company to file a revision under section 115 of the Civil Procedure Code.

6. We, therefore, dispose of this appeal with liberty to file Civil Revision Application challenging the award impugned in this appeal and we clarify that if such a Petition is filed within a period of 4 weeks from today, the issue of delay would not arise. The amount deposited will be treated as a deposit in the Revision Application.

7. Appeal is dismissed with liberty as stated herein above. No costs.

B. H. MARLAPALLE, J.

N. A. BRITTO, J.

AN